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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1971

No. 71-1362

WILLIAM JACOB JOHNSON,
Petitioner,

v.

COMMITTEE ON EXAMINATIONS AND ADMISSIONS OF THE SUPREME COURT OF ARIZONA,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

PETITIONER'S REPLY MEMORANDUM

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To the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Respondent, in his opposing brief in No. 71-1362, not dated but received by Petitioner on May 22, 1972, alleges that the Committee on Examinations and Admissions of the Supreme Court of Arizona (Committee) is not a proper party to this Petition. In the ONLY PRIOR written response (Response to Motion for Reconsideration to No. SB-10 dated the 21st day of February) the Committee Chairman, Mark Wilmer, stated: "In conclusion, since the obligation of

the Committee members as to passing or failing an applicant whose grades are borderline is a difficult and delicate task and largely a matter of judgment, the Committee believes that it responsibly discharged its obligation to this Court by initiating a review of a Black applicant's grades, on its own motion, prior to release of the grades." In Schware v. Board of Bar Examiners, 353 U.S. 232, 233, 234 (1957), it is perfectly clear that the functions of the "Board" in the State of New Mexico are analogous to the "Committee" in the State of Arizona. Therefore, the "Committee", based upon the foregoing, has heretofore been recognized as a proper party to this type of Petition.

On pages 4 and 5 of the first paragraph of the ARGUMENT, Respondent attempts to equate the Charles S. Murry, a Negro, legal proceedings (Cause No. 10563 in the Supreme Court of Arizona) to issues of this Petition, No. 71-1362. Mr. Murry's allegations are in the context of claims of discrimination by the Committee against Negroes. The proceedings, incompletely enumerated by Respondent, evidence especial treatment to all failing Negro Bar examinees. Included in the certified record, presently in the possession of the Court, is an affidavit response, filed on July 8, 1971, in the Matter of Charles S. Murry, (Cause No. 10563) wherein on page 1 the Committee Chairman states: "In answer to paragraph VII, your Committee alleges: Your Committee is conscious of the need for additional representation of minority groups in the legal profession and is and has been of the belief that every reasonable consideration should be extended to any member of a minority race sitting for the Bar examination. In recent years, the first time any Black applicants applied for and sat for a Bar examination was the July

1970 examination. Your Committee prior to its grade review meeting following the July 1970 examination entrusted to Mrs. Doris Odom, the Assistant Secretary, the responsibility for ascertaining the identity, prior to the grade review meeting, of each Negro applicant and determining whether or not any of the Negro applicants had failed the examination. Mrs. Odom's instructions were that in the event of failure (but only in the event of failure) the papers of these Negro applicants were to be segregated and provided to the Committee at its review of marginal papers prior to the release of the passing and failing grades. Since the Committee as a policy matter does not review the recommended grades of each Committee member if the grade is substantially below the passing grade it was necessary that Mrs. Odom segregate and provide the papers of all failing Negro applicants regardless of the severity of the failure. . . " Predicated upon the foregoing, it is obvious that your Petitioner, a non-Negroid, did not receive this especial treatment and finds this racial division of failing examinees to be invidious and unequal.

Regarding Respondent's request that the Court take judicial notice of Cause No. CIV. 71-692 Phx. in the United States District Court for the District of Arizona, Petitioner would like to point out that this matter had diverse issues from this Petition No. 71-1362, particularly, since it was a civil suit. It is respectfully submitted that this litigation is neither relevant nor material to Petitioner's case.

In paragraph two of the Respondent's ARGUMENT, it is alleged that Petitioner has quoted out of context certain statements of a member of the Committee given during the full day's closed hearing

before a Special Master in the Matter of Charles S. Murry, a Negro, Cause No. 10563, Respondent further claims that review of the transcript (Certified record label: Tang Hearing) "establishes beyond question that it is the policy and practice of Respondent to administer fairly and impartially to all applicants Bar examinations conducted in accordance with the Rules prescribed by the Supreme Court of Arizona." Petitioner objects to the ambiguous allegation of his quoting certain statements out of context and vehemently disputes the claim of fair and impartial treatment of all Bar examination applicants by reproducing, forthwith, verbatim a few pertinent excerpts from said transcript considered relevant and material. Starting at line 17 on page 153, Mr. Bursh, counsel for Mr. Murry, cross-examines the Committee Chairman, as follows:

Q In handling of minority applicants' exams, what is the procedure when a minority applicant fails to make a require(d) 70 average?

A Well there has been an occasion when Mrs. Odom has been instructed that after the grades had been received by her and tabulated that she is to advise the Committee on their final review as to whether or not any--when you say minority, I'm referring now to Negro or Black applicants who actually failed, my instructions are that those papers are to be made available to the Committee so we can review them to be sure that no one has made a mistake.

Q Do we (you) follow the same procedure with the Indian applicants?

A No, I probably would have if I had known there was an Indian applicant, but I didn't

know there was an Indian applicant, frankly.

Q What about Mexican-Americans?

A I really haven't given the matter any thought. This was a matter done perhaps a little bit impulsively and I have some reservations, and whether or not it would be continued I think is very debatable. In fact I don't think it will be continued.

(The foregoing testimony was made after the three Bar examinations in point. Has this policy been continued?)

Petitioner next quotes from said transcript, starting at line 9 on page 174, testimony wherein Mr. Murry cross-examines the Committee Chairman regarding Mr. Bursh, counsel for Mr. Murry and a Negro, who was admitted to the Bar following the July 1970 examination by resort to the Negro only segregation policy, as follows:

Q Did you personally pass Mr. Bursh?

A Yes.

Q You personally did that?

A I personally told the Committee, I told Mr. Bursh, I thought Mr. Bursh was qualified and the Committee agreed with me on a majority vote that Mr. Bursh was.

Q On your personal recommendation?

A I don't know if this was my personal recommendation, it was on a review of his papers at the time of our review session, the quality of his answers on the papers indicated an ability to practice law and based on that I recommended personally that he be passed; that I told Doris to give him a passing grade.

Q Give him a passing grade?

A Yes sir.

Q Had Mr. Bursh made 70 on that examin-

ation?

A I don't remember what he made.

Q But it wasn't 70?

A He did not originally get 70, no sir.

Q 70 is passing?

A He did not.

Q And 70 is passing, is it?

A Mr. Murry, I have told you three times that 70 is passing. He did not get 70 on the original grading. When the Committee reviewed it, before the grades were released, we discussed the matter and by unaminous agreement of the Committee members who were present it was agreed that Mr. Bursh's papers were of a sufficient quality that we would be justified conscientiously in recommending to the Supreme Court his admission to the Bar, and I told Doris Odom to give him a passing grade.

Further cross-examination of the Committee Chairman starting at line 10 on page 176 manifests the following:

Q BY MR. BURSH: The only thing that I would like to question Mr. Wilmer on is the purpose of your reviewing the minority applicants or the Black applicants' papers that have failed. Is it to see if any consideration can be given to that minority applicant in assisting him in passing?

A Consideration, Mr. Bursh, is to be sure that the man received fair treatment, to be sure that his papers, his answers have been analyzed carefully rather than in the hurly burly of reviewing two hundred papers.

Finally, the Committee Chairman on re-direct

examination responded to a very significant question, starting at line 22 on page 192, as follows:

> Q Did you give Mr. Murry's papers the same consideration upon reviewing them in 1970 after the July examination that you gave the other Black applicants' papers who were also reviewed?
>
> A Yes.

On page 5, paragraph two, of Respondent's ARGUMENT of his opposing brief in No. 71-1362, it is stated that, "There is not one shred of evidence contained anywhere in the record transmitted to this Court to establish or even suggest that Petitioner's examination papers were graded down or ...." Petitioner agrees with this statement, since he had never made such an allegation, whereas, the aforementioned transcript (Certified record label: Tang Hearing), manifests that this was one of Mr. Murry's main issues. Respondent appears to be clouding the issues or has made a serious mistake in portraying the truth of Petitioner's case. The balance of this disjunctive sentence is inconsistent with the last sentence of the STATEMENT on page 4 which refers to Exhibit 6. Exhibit 6 is Petitioner's formal petition to the Committee in accordance with Rule 28(c) XII E. Respondent's conclusion, that without a showing that Petitioner's examination papers were graded down his claim of discrimination is unfounded, is clearly erroneous.

The third paragraph, page 6, under the caption ARGUMENT of the opposing brief requires no detailed comment other than to state that again issue avoidance is done in a patent manner and this Rule is absolutely contrary to the principle of democracy.

Petitioner's Doctor, Nurse, Dentist, Lawyer, Accountant, Realtor, Pharmicist, Journalist and

other professional and layman friends in Arizona and in other States are deeply concerned with the issues of the Petition considering the same to be "well founded" and basic to our system of democracy.

In light of the inability of Respondent to face the issues presented in the Petition without avoiding and/or grossly distorting the facts, the need for plenary review of the action below is indisputable; indeed, Petitioner suggests that summary reversal is now in order.

Respectfully submitted,

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May 26, 1972